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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,570	07/24/2001	Roberto DeLima	RSW9-2000-0124-US1	5486
25259 7590 04/18/2007 IBM CORPORATION 3039 CORNWALLIS RD. DEPT. T81 / B503, PO BOX 12195 RESEARCH TRIANGLE PARK, NC 27709			EXAMINER PHILLIPS, HASSAN A	
			ART UNIT 2151	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		04/18/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/18/2007.

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RSWIPLAW@us.ibm.com

Office Action Summary	Application No.	Applicant(s)	
	09/912,570	DELIMA ET AL.	
	Examiner	Art Unit	
	Hassan Phillips	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-12,14 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-12,14 and 16-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to communications filed March 5, 2007.

Claim Objections

2. After consideration of the amendments made to claim 20 to correct minor informalities, examiner has withdrawn the objection to claim 20.

Response to Amendment

3. The declaration filed on March 5, 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the cited Romero reference, U.S. Patent Pub. No. 2002/0129127.

4. While the evidence submitted sufficiently establishes a conception date prior to the Romero reference, the evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Romero reference (March 6, 2001), to either a constructive reduction to practice or an actual reduction to practice. The examiner acknowledges the representative email threads and attachments in exhibit D sent prior to March 6, 2001. Nevertheless, the representative emails only show a response from inventor Roberto DeLima sent January 11, 2001, to communications sent from Mark D. Simpson on October 27, 2000. The only other email thread for showing diligence in exhibit D is an email from Roberto DeLima to himself on March 16, 2001, however it is not clear if this email is even directly related to the

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reduction to practice of the claimed invention. The work relied upon to show reasonable diligence must be directly related to the reduction to practice of the invention in issue. Furthermore, even if the email Roberto DeLima sent to himself is directly related to the reduction to practice of the claimed invention, the next clear date shown by the evidence, in exhibit E, is May 10, 2001, nearly two months after the date Roberto DeLima emailed himself. An applicant must account for the entire period during which diligence is required. Merely stating that there were no weeks or months that the invention was not worked on is not enough. Diligence requires that applicants must be specific as to dates and facts (see MPEP 2138.06).

5. Accordingly the references supplied by the examiner in the previous office action covers the claimed limitations. The rejections are thus sustained. Applicant is requested to review the prior art of record for further consideration.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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7. Claims 1,3-6, 8, 10-12, 17, 18, 21, 22, are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Romero et al. (hereinafter Romero), U.S. Patent Pub. No. 2002/0129127.

8. In considering claims 1, 10, and 12, Romero discloses a method, a computer readable product embodied on computer readable media readable by a computing device, and apparatus for configuring a load balancer (130) for dispatching client (100) requests amongst a plurality of servers (160-162), said method, computer readable product, and apparatus comprising: storing a configuration file (300) in a local memory of each one of said plurality of servers, each of said configuration files containing parameters (330) including variables to be applied for configuring a load balancing scheme for said plurality of servers, (pg. 4, par.'s 0031 and 0033); obtaining said configuration files from each of said plurality of servers, (pg. 4, par. 0031); and configuring said load balancer to dispatch client requests (110) among said plurality of servers based on a load balancing algorithm defined by said parameters including said variables obtained from said configuration files, (pg. 4, par. 0031).

9. In considering claims 3, 11, and 21, it is inherent in the teachings of Romero that each of said configuration files has a file path and name in accordance with a standard file path and naming protocol, (pg. 4, par. 0033).

10. In considering claims 4, 17, and 22, Romero discloses said parameters provided in at least one of said configuration files comprises content-based routing rules, (pg. 4, par. 0031).

11. In considering claim 5, it is inherent in the teachings of Romero that said content-based routing rules comprise a URL mask, (pg. 2, par. 0018).

12. In considering claims 6 and 18, Romero discloses said parameters of at least one configuration file comprise at least one of time-of-day rules, session affinity rules cookie affinity rules, server health information and a link to said server health information, (pg. 4, par.'s 0031 and 0032).

13. In considering claim 8, Romero discloses said plurality of servers comprise a server farm (200) coupled to receive client requests via the Internet (120), (pg. 3, par. 0026).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 9, 14, 19, 23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Romero.

16. In considering claim 9, although the teachings of Romero disclose substantial features of the claimed invention, they fail to expressly disclose: said configuration files are stored in one of an HTML or XML file format.

Nevertheless, Romero does disclose said plurality of servers may be HTML servers, (pg. 2, par. 0018).

Thus, it would have been readily apparent to one of ordinary skill in the art that the teachings of Romero provide a means for said configuration files to be stored in one of an HTML or XML file format. Storing said configuration files in one of an HTML or XML format would have advantageously and efficiently allowed the load balancer to obtain configuration files utilizing the same protocol that clients use to obtain content from the servers, (pg. 2, par. 0018).

17. In considering claims 14, 19, and 23, Romero further discloses polling each one of said plurality of servers for said configuration file pertaining to each of said servers, (pg. 4, par. 0031); and configuring the load balancing algorithm based on said parameters in said configuration files, (pg. 4, par. 0031).

Although the teachings of Romero disclose substantial features of the claimed invention, they fail to expressly disclose: initializing the load balancer by manually

inputting the address information of each one of said plurality of servers, and validating each of said configuration files.

Nevertheless, Romero does disclose including the polling functionality at the load balancer, (pg. 2, par. 0016).

Thus, if not implicit in the teachings of Romero, it would have been readily apparent to one of ordinary skill in the art to modify the teachings of Romero to expressly disclose initializing the load balancer by manually inputting the address information of each one of said plurality of servers. This would have obviously disclosed one way of providing the load balancer the capability to poll the servers, (pg. 2, par. 0016, pg. 4, par. 0031). Further, if not implicit in the teachings of Romero, it would have been readily apparent to one of ordinary skill in the art that since Romero teaches polling each one of said plurality of servers for said configuration file pertaining to each of said servers, and configuring the load balancing algorithm based on said parameters in said configuration files, the teachings of Romero provide a means for validating each of said configuration files. This would have obviously made sure the configuration files were from an official source before utilizing the information in the files, (pg. 4, par. 0031).

18. Claims 16, 20, 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Romero in view of Reichmeyer et al. (hereinafter Reichmeyer), U.S. Patent 6,286,038.

19. In considering claims 16, 20, and 24, although the teachings of Romero disclose substantial features of the claimed invention, they fail to expressly disclose: storing configuration files provided by a server manufacturer.

Nevertheless, storing configuration files provided by a server manufacturer was well known in the art at the time of the present invention. This is evidenced by Reichmeyer, who, in an analogous art, discloses storing configuration files provided by a server manufacturer, (col. 3, lines 7-29).

Thus, if not implicit in the teachings of Romero, it would have been readily apparent to one of ordinary skill in the art to modify the teachings of Romero to disclose storing configuration files provided by a server manufacturer. This would have advantageously preconfigured the servers in cases where the installation environment was known, (Reichmeyer, col. 3, lines 7-29).

Conclusion

20. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is 571-272-3940. The examiner can normally be reached on Mon-Fri (8am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HP/
4/10/07


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